

EXHIBIT 45

FILED UNDER SEAL

9/10/2024

VirtaMove Corp. v. Amazon.com, Inc., et al.

Donn Rochette

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS MIDLAND/ODESSA DIVISION</p> <p>VIRTAMOVE, CORP.,)) CASE NO. PLAINTIFF,) 7:24-CV-00030) v.)) AMAZON.COM, INC.; AMAZON.COM) SERVICES LLC; AND AMAZON WEB) SERVICES, INC.,)) DEFENDANTS.)</p> <p>VIDEOTAPED DEPOSITION OF DONN ROCHETTE TAKEN REMOTELY VIA ZOOM VIDEOCONFERENCE TUESDAY, SEPTEMBER 10, 2024 11:04 A.M. CDT</p> <p>REPORTED BY AUDRA E. CRAMER, CSR NO. 9901</p> <p>DIGITAL EVIDENCE GROUP 1730 M Street, NW, Suite 812 Washington, D.C. 20036 (202) 232-0646</p>	<p>I N D E X</p> <p>EXAMINATION PAGE</p> <p>BY MR. ANAPOL 5</p> <p>BY MR. TONG 95</p> <p>BY MR. ANAPOL 139</p> <p>BY MR. TONG 155</p> <p>E X H I B I T S</p> <p>NO. PAGE DESCRIPTION</p> <p>1010 14 US PATENT 7,519,814</p> <p>1009 18 ARCHIVE VERSION OF THE HOMEPAGE ONCORE SYSTEMS CORPORATION</p> <p>1011 24 US PATENT 7,784,058</p> <p>1012 42 AUSTRALIAN UNIX SYSTEMS USER GROUP NEWSLETTER, VOLUME 8, NUMBER 5</p> <p>QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER</p> <p>PAGE LINE</p> <p>144 7</p> <p>145 2</p> <p>REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.</p>
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<p>VIDEOTAPED DEPOSITION OF DONN ROCHETTE, TAKEN REMOTELY VIA ZOOM ON BEHALF OF THE DEFENDANTS AT 11:04 A.M. CDT, TUESDAY, SEPTEMBER 10, 2024, BEFORE AUDRA E. CRAMER, CSR NO. 9901, PURSUANT TO SUBPOENA.</p> <p>APPEARANCES OF COUNSEL</p> <p>ON BEHALF OF THE PLAINTIFF:</p> <p>RUSS AUGUST & KABAT BY: PETER TONG, ESQUIRE 4925 GREENVILLE AVENUE, SUITE 200 DALLAS, TEXAS 75206 (310) 826-7474 ptong@raklaw.com</p> <p>ON BEHALF OF THE DEFENDANTS:</p> <p>KNOBBE, MARTENS, OLSON & BEAR LLP BY: JEREMY ANAPOL, ESQUIRE 2040 MAIN STREET, 14TH FLOOR IRVINE, CALIFORNIA 92614 (949) 760-0404 jeremy.anapol@knobbe.com</p> <p>ALSO PRESENT</p> <p>BILLY FAHNERT, VIDEOGRAPHER</p>	<p>REMOTELY VIA ZOOM VIDEOCONFERENCE TUESDAY, SEPTEMBER 10, 2024, 11:04 A.M. CDT</p> <p>THE VIDEOGRAPHER: We are on the record. This is the remote video deposition of Donn Rochette in the matter of VirtaMove Corp. versus Amazon.com, Inc., et al., filed in the United States District Court for the Western District of Texas.</p> <p>My name is Billy Fahnert. I am the video technician today. The court reporter is Audra Cramer. We both represent Digital Evidence Group.</p> <p>Today's date is September 10, 2024. The time is 11:04 a.m. Central Standard Time.</p> <p>All parties have stipulated to the witness being sworn in remotely.</p> <p>Will Counsel please identify yourselves for the record, and then the witness will be sworn in.</p> <p>MR. TONG: This is Peter Tong from Russ August & Kabat on behalf of VirtaMove</p>

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<p>Page 61</p> <p>1 know it's repetitive in some sense. 2 By 2002 did software developers in 3 Silicon Valley know that servers could limit the 4 resources used by a container? 5 MR. TONG: Objection. Calls for 6 speculation. Foundation. Leading. 7 THE WITNESS: Yes. 8 BY MR. ANAPOL: 9 Q. And did the OnCore operating system 10 have the ability to limit resources used by a 11 container? 12 MR. TONG: Same objections. 13 THE WITNESS: That was not the intent 14 of the OnCore system, no. There was no explicit 15 limiting of resources or -- in that -- in that 16 architecture. 17 BY MR. ANAPOL: 18 Q. But the OnCore system would allow a 19 real-time program to preempt an application 20 running in a Unix container; correct? 21 A. That is correct. But not for -- it 22 would not allow -- it would not enforce the</p>	<p>Page 63</p> <p>1 BY MR. ANAPOL: 2 Q. And by 2002 did software developers in 3 Silicon Valley know that containers could have 4 their own IP address separate from a host? 5 MR. TONG: Same objections. 6 THE WITNESS: I'm not 100 percent sure 7 of that. That was very difficult -- that's very 8 difficult to accomplish, the IP address, and I 9 don't -- honestly don't recall if that was 10 considered sort of commonplace. 11 BY MR. ANAPOL: 12 Q. But would it surprise you if someone 13 had that capability before 2002? 14 MR. TONG: Objection -- 15 THE WITNESS: It would not surprise 16 me -- 17 MR. TONG: -- foundation. 18 THE WITNESS: -- no. 19 Oh, sorry. 20 BY MR. ANAPOL: 21 Q. Can you repeat the answer, 22 Mr. Rochette.</p>
<p>Page 62</p> <p>1 amount of memory, for example, that a Unix 2 application would use. Nothing of that nature 3 was done. 4 Yes, the really important thing was 5 that an application running in a real-time 6 context could preempt anything running in Unix 7 and be able to respond immediately. 8 Q. And when the real-time application 9 preempts the application in the Unix container, 10 the real-time container is taking processing 11 resources away from the container at that time? 12 A. Absolutely correct, yes. 13 MR. TONG: Same objections. 14 THE WITNESS: Sorry. I should wait for 15 you to object. 16 Yes. 17 BY MR. ANAPOL: 18 Q. By 2002 did software developers in 19 Silicon Valley know that servers could monitor 20 and log a container's resource usage? 21 MR. TONG: Same objections. 22 THE WITNESS: Yes.</p>	<p>Page 64</p> <p>1 A. It would not surprise me, no. 2 Q. And by 2002 did software developers in 3 Silicon Valley know how to move software 4 functionality into a shared library? 5 MR. TONG: Objection. Calls for 6 speculation. Foundation. Legal conclusion. 7 Not venue discovery. Leading. 8 THE WITNESS: Yes. 9 BY MR. ANAPOL: 10 Q. And do you know whether Trigence 11 released its container software before or after 12 Solaris zones? 13 A. I don't recall whether anything in 14 Windows or Linux was released before or after 15 zones, no. I don't recall the dates, no. 16 Q. Have you ever heard of Docker? 17 A. Yes. 18 Q. And what is your understanding of 19 Docker? 20 A. Docker is a container technology that 21 is in wide use today. 22 Q. And when did you first hear about</p>

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<p>Page 65</p> <p>1 Docker?</p> <p>2 A. Maybe after the Trigence days, at the</p> <p>3 end of Trigence -- my time at Trigence. I don't</p> <p>4 recall a date.</p> <p>5 Q. Have you personally used Docker?</p> <p>6 A. Yes.</p> <p>7 Q. In what context?</p> <p>8 A. Creating containers. Allowing -- for</p> <p>9 development purposes. For production purposes.</p> <p>10 For monitoring purposes. We use Docker quite a</p> <p>11 bit.</p> <p>12 Q. When you say, "We have used Docker,"</p> <p>13 who are you referring to?</p> <p>14 A. Oh, I'm sorry. Multiple development</p> <p>15 teams that I've been a part of. We have all</p> <p>16 used Docker.</p> <p>17 Q. Which companies that you've worked at</p> <p>18 have used Docker?</p> <p>19 A. AppFirst. ScienceLogic. I worked as a</p> <p>20 contractor for the US Air Force for a while.</p> <p>21 And Cribl most recently.</p> <p>22 Q. Okay. So all four of those</p>	<p>Page 67</p> <p>1 A. Cribl is located in San Francisco.</p> <p>2 Q. And do you know if Cribl is using</p> <p>3 Docker in San Francisco?</p> <p>4 A. Yes.</p> <p>5 Q. And did you visit San Francisco when</p> <p>6 you worked for Cribl?</p> <p>7 A. Yes.</p> <p>8 Q. How often?</p> <p>9 A. Not very often. Once a year.</p> <p>10 Q. And are there a lot of people in</p> <p>11 Northern California who know about Docker?</p> <p>12 A. Yes.</p> <p>13 MR. TONG: Objection. Calls for</p> <p>14 speculation.</p> <p>15 BY MR. ANAPOL:</p> <p>16 Q. And Cribl is the most recent company</p> <p>17 that you worked at?</p> <p>18 A. That is correct.</p> <p>19 Q. Do you still work there?</p> <p>20 A. No. I am retired.</p> <p>21 Q. Oh, right. You mentioned that earlier.</p> <p>22 When did you retire from Cribl?</p>
<p>Page 66</p> <p>1 organizations used Docker?</p> <p>2 A. Correct.</p> <p>3 Q. And, Mr. Rochette, have you ever heard</p> <p>4 of containerd?</p> <p>5 A. Yes.</p> <p>6 Q. What's your understanding of</p> <p>7 containerd?</p> <p>8 A. Containerd is a process that runs in</p> <p>9 the background as a part of Docker and is --</p> <p>10 implements a large portion of the Docker</p> <p>11 functionality.</p> <p>12 Q. And do you have an understanding of</p> <p>13 where Docker originated?</p> <p>14 MR. TONG: Objection. Calls for</p> <p>15 speculation.</p> <p>16 THE WITNESS: I don't, actually. I</p> <p>17 know it's open source, but I don't know where or</p> <p>18 what group originated it, no.</p> <p>19 BY MR. ANAPOL:</p> <p>20 Q. You mentioned Cribl in one of your</p> <p>21 earlier answers.</p> <p>22 Where is Cribl located?</p>	<p>Page 68</p> <p>1 A. 1st of September two years ago.</p> <p>2 Q. 2022?</p> <p>3 A. Yes.</p> <p>4 Q. And how does Docker compare to the</p> <p>5 technology developed at Trigence?</p> <p>6 MR. TONG: Objection. Calls for legal</p> <p>7 conclusions. And Daubert.</p> <p>8 THE WITNESS: It is very similar.</p> <p>9 Docker containers are quite similar to what is</p> <p>10 described in the Trigence patent. There are --</p> <p>11 there are a lot of differences. You know, any</p> <p>12 software developer can describe those</p> <p>13 differences to you. But overall the ability to</p> <p>14 create multiple containers with, you know,</p> <p>15 multiple disparate applications running in them</p> <p>16 is consistent.</p> <p>17 BY MR. ANAPOL:</p> <p>18 Q. And what do you mean by "disparate</p> <p>19 applications"?</p> <p>20 A. Primarily referring to applications</p> <p>21 that would require a specific version of an</p> <p>22 operating system. So something that would run</p>

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<p>Page 69</p> <p>1 on -- something that was originally running in a 2 Windows 10 environment that would be placed in a 3 container and could run in a Windows 12 4 environment. That's what I mean by "disparate," 5 meaning -- 6 Q. So the environments are disparate, 7 meaning different versions of the same operating 8 system? 9 A. Different versions of the same 10 operating system, correct. 11 Q. Okay. So did you make the decision to 12 use Docker at the four companies you mentioned, 13 or did somebody else make that decision? 14 A. Oh, no, somebody else made the 15 decision. It was -- yeah. 16 Q. Did you ever suggest to any of those 17 four companies that they use Trigrance AE instead 18 of Docker? 19 A. No. 20 Q. Why not? 21 A. Because -- the primary reason is 22 because of the difference in the way the</p>	<p>Page 71</p> <p>1 Q. And do you have an understanding of 2 whether any of the four companies you worked at 3 that use Docker were also using containerd? 4 A. If you were using Docker, you were 5 using containerd. 6 Q. So all four of those companies were 7 also using containerd? 8 A. Yes. 9 Q. Okay. I want to talk a little bit more 10 about the disparate computing environments that 11 you mentioned. 12 A. Okay. 13 MR. ANAPOL: And, Billy, could you 14 please pull up Exhibit 1010 for us, and scroll 15 down to Column 2, please. And around lines 17 16 to 19, can you blow that up for us. 17 Q. So in the '814 patent, Mr. Rochette, do 18 you see that there's this definition of 19 "disparate computing environments"? 20 A. Yes. 21 Q. Do you know what this means? 22 A. Yeah. It's -- it's worded like a</p>
<p>Page 70</p> <p>1 Trigrance AE is implemented, which requires 2 function overlays and shared libraries and so 3 forth. It's difficult for larger companies' 4 environments to adopt that kind of approach. 5 Q. Why? 6 A. Because it modifies the way -- there 7 are modifications in the way in which an 8 application would run that are reliant on 9 private, non-open-sourced libraries and so forth 10 that make it very difficult for someone to be 11 able to validate -- and you need support and 12 things like that. 13 So it's much more difficult to adopt 14 that kind of an approach. And I think one of 15 the reasons -- it's one of the reasons why 16 Docker is very typically chosen over an approach 17 like Trigrance AE. 18 Q. And did you ever think that the 19 companies you were working for that use Docker 20 needed a license to the '814 or '058 patents? 21 A. No. Never crossed my mind. It never 22 crossed my mind that they were similar.</p>	<p>Page 72</p> <p>1 lawyer would word it. Sorry. 2 It is -- it's meant to speak to the 3 ability for applications that are unrelated to 4 each other to run in a common compute platform. 5 Q. So it says, "Environments where 6 computers are stand-alone or where there are 7 plural computers and where they are unrelated." 8 So does "unrelated" refer to the 9 computers or to the applications running on 10 them? 11 A. In this statement it refers -- 12 MR. TONG: Objection. Calls for a 13 legal conclusion. 14 THE WITNESS: Oh, sorry. 15 BY MR. ANAPOL: 16 Q. Go ahead, Mr. Rochette? 17 A. In this statement it refers to the 18 computer platform -- the computer platforms. 19 Q. And what does it mean for computer 20 platforms to be unrelated? 21 MR. TONG: Objection. Calls for a 22 legal conclusion.</p>

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1 Donn Rochette, c/o Pro se	1 Digital Evidence Group, LLC
2	2 1730 M Street, NW, Suite 812
3	3 Washington, D.C. 20036
4 Case: VirtaMove Corp. v. Amazon.com, Inc., et al.	4 (202)232-0646
5 Date of deposition: September 10, 2024	5
6 Deponent: Donn Rochette	6 ERRATA SHEET
7	7
8 Please be advised that the transcript in the above referenced matter is now complete and ready for signature.	8 Case: VirtaMove Corp. v. Amazon.com, Inc., et al.
9 The deponent may come to this office to sign the transcript, a copy may be purchased for the witness to review and sign, or the deponent and/or counsel may waive the option of signing. Please advise us of the option selected.	9 Witness Name: Donn Rochette
10 Please forward the errata sheet and the original signed signature page to counsel noticing the deposition, noting the applicable time period allowed for such by the governing Rules of Procedure. If you have any questions, please do not hesitate to call our office at (202)-232-0646.	10 Deposition Date: September 10, 2024
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3
4 SIGNATURE PAGE Case: VirtaMove Corp. v. Amazon.com, Inc., et al. Witness Name: Donn Rochette Deposition Date: September 10, 2024
5
6 I do hereby acknowledge that I have read 7 and examined the foregoing pages of the transcript of my deposition and that:
8
9 (Check appropriate box): () The same is a true, correct and 10 complete transcription of the answers given by me to the questions therein recorded. 11 () Except for the changes noted in the attached Errata Sheet, the same is a true, 12 correct and complete transcription of the 13 answers given by me to the questions therein 14 recorded.
15
16
17 DATE WITNESS SIGNATURE
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